aside the deed on the ground of fraud. In such a case it has been held that the verified answer of the defendant is insufficient, although the court said it would be sufficient in case the action were to establish the trust. *Hutchinson* v. *Tindall,* 3 N. J. Eq. 357. In that case, however, there was no evidence to support the answer and the court refused to accept an answer in avoidance as evidence in defendant's favor. In *Brender* v. *Stratton, supra,* the defendant's testimony was clear and convincing. The court was satisfied that the land was conveyed upon trust. If the Statute of Frauds were satisfied, therefore, there was no difficulty in making out the trust. The writing to satisfy the Statute of Frauds need not contain "all the terms of the trust." 17 MICH. L. REV. 266. A subsequent writing satisfies the statute, since an oral trust in lands is not illegal. 13 HARV. L. REV. 608; BOGERT ON TRUSTS (1921), 61. Many of the forms which such declarations may take are stated in PERRY ON TRUSTS (Ed. 6), Sec. 82. A verified answer in chancery by the trustee is sufficient. *Schumacher* v. *Draeger,* 137 Wis. 618; *Barron* v. *Barron,* 24 Vt. 375. A guardian's report is also sufficient. *Snyder* v. *Snyder,* 280 Ill. 467. No case has been found where the testimony of a guarantee was permitted to set up an enforceable trust; and it has been held that such testimony reduced to writing does not satisfy the statute. *Hasshagen* v. *Hasshagen,* 80 Cal. 514. However, pleadings signed by counsel are held to constitute a sufficient memorandum. 19 MICH. L. REV. 752. In the principal case the court emphasized the fact that there was more than the oral testimony of the defendant under oath. The defendant's attorney called the attention of the court to the nature of her claim, although there were no formal pleadings filed. The decision seems sound, as the disclosures made in formal court proceedings supply an equivalent of the solemnity contemplated by the Statute of Frauds.

WILLS—RIGHT OF ACTION AS AN ESTATE ON WHICH TO BASE JURISDICTION TO GRANT LETTERS OF ADMINISTRATION.—Decedent, at the time of his death, was a resident of Michigan. He suffered injury from the D railroad in Indiana and the injury resulted in his death. An administrator was appointed in Indiana for the sole purpose of prosecuting a claim for damages. *Held,* a claim for damages for causing the death of a party is not assets within the meaning of the statute authorizing the granting of letters of administration in this state. *Tri-State Loan and Trust Co.* v. *Lake Shore & M. S. Ry. Co.* (Ind., 1921), 131 N. E. 523.

The usual code provision is that an administrator for a non-resident may be appointed only in the county where he leaves assets. At common law, a cause of action for an injury to the person dies with the party injured. To determine whether a right of action for causing death is an asset of the intestate on which to base jurisdiction to grant letters of administration, the particular statute giving the right should control. If the statute continues the cause of action for the injury to the deceased in favor of his personal representative, or on account of the death gives a new cause of action for the benefit of the intestate's estate, the cases agree that this is an asset of the *intestate's* estate. A recent case so holding is that of *St. Louis S.*

W. Ry. Co. v. *Smitha* (Tex., 1921), 232 S. W. 494. There it was held that a right of action for injury and death under the Federal Employers' Liability Act was an estate on which administration might be granted. That act expressly provides that actions for injury should survive. Accord, *Findlay* v. *Chi. & Grand Trunk Ry. Co.*, 106 Mich. 700; *In re Lowham's Estate*, 30 Utah 436. But if the statute gives a new cause of action to the widow or next of kin, even though it is to be enforced by the administrator of the intestate, the right logically is not an asset of the *intestate's* estate. The difficulty in many cases, when not expressly stated, is to determine whether the statute gives the right to the estate of the intestate or creates a right in the widow or next of kin. Indiana, Kansas, Nebraska, Iowa, and Minnesota have statutes practically identical. These statutes provide that if injury results in death the party causing the death shall be liable; the suit must be brought by the personal representative of the deceased; the damages shall be for the exclusive benefit of the widow and next of kin. In interpreting this statute, the principal case, following *Jeffersonville R. R. Co.* v. *Swayne's Adm'r.*, 26 Ind. 477, held that the damages must be measured by the loss to the widow and next of kin caused by the death of the intestate; that the statute therefore created an entirely new cause of action in the widow and next of kin, and this cause of action was no part of the intestate's estate. This interpretation was followed in *Perry* v. *St. Joseph & Western Ry. Co.*, 29 Kan. 420. On the other hand, the courts of Nebraska, Iowa, and Minnesota emphasize that part of the statute which says that the suit must be brought by the personal representative of the deceased, and hold that this shows an intent that the right of action should be a part of the decedent's estate, even though the entire amount is to be paid over to the widow or next of kin. *Mo. Pac. Ry. Co.* v. *Bradley*, 51 Neb. 596; *Morris* v. *C., R. I. & P.*, 65 Iowa 727; *Hutchins* v. *St. Paul, M. & M. Ry.*, 44 Minn. 5. The practical result of the holding in Indiana and Kansas is that these courts have no jurisdiction to appoint an administrator to enforce the claim if the non-resident decedent had no other assets within the state. Kansas, however, has a provision in her code (Par. 422) which allows a foreign administrator to come into the state and prosecute the action and thus prevent the right from being lost, *Kans. Pac. Ry. Co.* v. *Cutter*, 16 Kans. 568; although, where the injury occurred in Kansas, suit under the Kansas law may be denied at the domicile. *Oates* v. *U. P. Ry. Co.*, 104 Mo. 514. Can the question of jurisdiction to appoint an administrator because of lack of assets be raised by collateral attack? In *McCarron* v. *N. Y. Cent.* (Mass., 1921), 131 N. E. 478, the court assumed, without deciding, that the question of jurisdiction could be raised by such attack, but held that if the court had jurisdiction a collateral attack could not raise the objection that someone, other than the administrator appointed, should have been appointed. The modern tendency of the cases, however, is that the question of jurisdiction cannot be raised by collateral attack. See note, 18 L. R. A. 242.